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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,023	02/12/2002	Alexander van der Lely	8553/251	8401

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Penrose Lucas Albright, Esq.
MASON, MASON & ALBRIGHT
P.O. Box 2246
Arlington, VA 22202-0246

EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,023

Applicant(s)

VAN DER LELY ET AL.

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

2. Claims 37-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 37 "the central unit", in claim 38 "the measurement data", and in claim 39 "the computer" lack prior antecedent bases. Regarding claim 37, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Van der Lely (5,816,190). Van der Lely disclose an apparatus for milking animals provided with a milk box (2) having a medical instrument (36) by means of which the blood pressure, the heartbeat, the temperature, etc. of an animal can be determined, such parameters

being indicators of stress; the data can be collected while the animal is in the milking compartment and the data is supplied to a computer where the physical state of individual animals can be stored so that historical data can be collected so that when a parameter measured by the instrument deviates from an average value inputted in the computer, then the farmer's attention is drawn thereto by means such as a print-out of the computer; wherein the device is suitable for and adapted to measure the data before, during and after milking depending on when one wishes to examine the animal; the instrument provides output data indicative of specific conditions of the animal.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mottram et al. (5,697,326) in view of Van Den Berg et al. (5,873,323). Mottram et al. disclose a device which is capable of use in conjunction with a milking apparatus since it is disclosed that the apparatus may be fixed to a milking stall for routine testing and that the examination may be applied when an animal presents for milking, further characterized in that the device is provided with a stress measuring device in the form of an olfactory sensor which samples odours from the animals teat or exhaled breath from the nostrils animal to identify specific aspects of the animal condition, and which is

therefore, capable of determining the degree of stress off an animal and supplying the stress measurement data to a storage device, wherein the device is suitable for and adapted to measure the data before, during and after milking depending on when one wishes to examine the animal; the sensor provides output data indicative of specific conditions of the animal. Van den Berg et al. teach a method of milking animals automatically while determining their physiological condition; the apparatus can include a sensor that works in conjunction with a computer which records and compares the data with other stored values (i.e. correspondence table), the results of the comparison being indicative of a physiological condition of the animal. Although it is not disclosed that the device of Mottram et al. itself stores the data, it would have been obvious to one of ordinary skill in the art at the time the invention was made to configure the electric circuitry of the device to record the sensor results as is taught by Van Den Berg et al. in order to develop a pattern of historical data which could be helpful in the treatment or utilization of the animal.

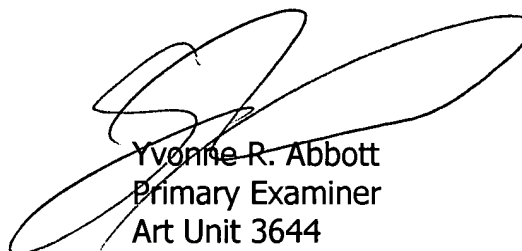
Allowable Subject Matter

7. Claim 40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on 7:30-5:00 flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on (703)306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-7687 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Yvonne R. Abbott
Primary Examiner
Art Unit 3644

December 14, 2002